

AMENDED IN SENATE AUGUST 13, 2014

AMENDED IN SENATE JULY 1, 2014

AMENDED IN SENATE JUNE 12, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2646

Introduced by Assembly Member Ting
(Coauthor: Assembly Member Weber)

February 21, 2014

An act to add Section 53.7 to the Civil Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 2646, as amended, Ting. Civil rights: political structure equal protection.

The California Constitution prohibits a person from being deprived of life, liberty, or property without due process of law, or from being denied equal protection of the laws. The United States Constitution prohibits a state from denying to any person within its jurisdiction the equal protection of the laws. Existing case law interprets that provision as guaranteeing racial minorities the right to full participation in the political life of the community, and prohibiting racial or ethnic groups from being denied, or precluded from entering into the political process in a reliable and meaningful manner.

Existing law permits individuals whose personal rights have been violated, in certain circumstances, to bring a civil action for damages or other appropriate relief.

This bill would prohibit a statute, ordinance, or other specified enactment from denying a minority group, as defined, political structure equal protection of the law by altering, restructuring, or reordering the policy decisionmaking process in a manner that burdens the ability of members of the minority group to effect the enactment of future legislation, solely with respect to a matter that inures primarily to the benefit of, or is primarily of interest to, one or more minority groups. The bill would authorize a member of a minority group, as defined, to bring a civil action challenging the validity of a statute or ordinance, or other enactment on that basis. The provision in question would be determined valid only upon a showing by the government that the burden it imposes is necessary to serve a compelling public interest, and is no greater than necessary to serve that interest. The bill would include supporting legislative findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) The United States Supreme Court has interpreted the Equal
4 Protection Clause of the Fourteenth Amendment of the United
5 States Constitution as disfavoring and subjecting to “strict scrutiny”
6 state and local laws that (1) target a suspect classification of
7 persons, (2) restrict a fundamental right, or (3) alter the political
8 policymaking process with respect to an issue of primary concern
9 to a minority group or groups. This last doctrine is commonly
10 referred to as “political structure equal protection.”
11 (b) The doctrine of political structure equal protection was
12 established primarily through two United States Supreme Court
13 decisions, *Hunter v. Erickson* (1969) 393 U.S. 385, and *Washington*
14 *v. Seattle School District No. 1* (1982) 458 U.S. 457. As a result,
15 this doctrine has also been referred to as the “Hunter/Seattle”
16 doctrine. In the recent case of *Schuetz v. BAMN, et al.* (2014)
17 134 S. Ct. 1623, the United States Supreme Court has further
18 interpreted the political structure equal protection doctrine,
19 although the implications of this new interpretation are not yet
20 clear.

1 (c) Because the Hunter/Seattle doctrine was established as a
2 part of the Equal Protection Clause of the Fourteenth Amendment
3 of the United States Constitution, there has not been the need or
4 occasion for the California Supreme Court to determine whether
5 the California Constitution, through its own guarantee of equal
6 protection of the laws under Section 7 of Article I, also includes
7 political structure equal protection.

8 (d) Because the California Constitution goes at least as far as
9 the United States Constitution in protecting rights and liberties,
10 and in some cases has been interpreted to go beyond the United
11 States Constitution in providing such protections, the guarantee
12 of political structure equal protection that has been part of the
13 United States Constitution for nearly 50 years should appropriately
14 be recognized in the California Constitution. Specifically, the
15 Legislature believes that Section 7 of Article I of the California
16 Constitution provides broader protection of individual liberties
17 and rights than the Equal Protection Clause of the Fourteenth
18 Amendment of the United States Constitution, and these broader
19 protections *should* include the political structure equal protection
20 doctrine, as interpreted prior to *Schuetz v. BAMN*.

21 (e) Independent of the guarantees afforded by the California
22 Constitution, the Legislature believes that the Hunter/Seattle
23 doctrine provides a prudent and salutary rule for statutory
24 protection against discriminatory statutes, ordinances, or other
25 state or local rules, regulations, or enactments.

26 SEC. 2. Section 53.7 is added to the Civil Code, to read:

27 53.7. (a) A statute, ordinance, or other state or local rule,
28 regulation, or enactment shall not deny a minority group political
29 structure equal protection of the law by altering, restructuring, or
30 reordering the policy decisionmaking process in a manner that
31 burdens the ability of members of the minority group to effect the
32 enactment of future legislation, solely with respect to a matter that
33 inures primarily to the benefit of, or is primarily of interest to, one
34 or more minority groups.

35 (b) (1) A member of a minority group, as defined in paragraph
36 (2), may bring a civil action challenging the validity of a statute,
37 ordinance, or other state or local rule, regulation, or enactment,
38 pursuant to subdivision (a).

1 (2) For purposes of this section, “minority group” means a group
2 of persons who share in common any race, ethnicity, nationality,
3 or sexual orientation.

4 (c) A statute, ordinance, or other state or local rule, regulation,
5 or enactment shall be determined valid in an action brought
6 pursuant to this section, only upon a showing by the government
7 that the burden imposed by the statute, ordinance, or other state
8 or local rule, regulation, or enactment satisfies both of the following
9 criteria:

10 (1) The burden is necessary to serve a compelling government
11 interest.

12 (2) The burden is no greater than necessary to serve the
13 compelling government interest.